

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

MONET CARTER-MIXON, as Personal  
Representative of the Estate of MANUEL  
ELLIS, and MARCIA CARTER,

Plaintiffs,

v.

CITY OF TACOMA, CHRISTOPHER  
BURBANK, MATTHEW COLLINS,  
MASYIH FORD, TIMOTHY RANKINE,  
ARMANDO FARINAS, RON  
KOMAROVSKY, PIERCE COUNTY, GARY  
SANDERS, and ANTHONY MESSINEO,

Defendants.

No. 3:21-CV-05692-LK

DEFENDANT RANKINE'S MOTION  
FOR COURT ORDER COMPELLING  
RELEASE OF MEDICAL RECORDS

NOTE ON MOTION CALENDAR:  
JULY 29, 2022

**I. INTRODUCTION**

Defendant Timothy Rankine ("Rankine") seeks a court order to compel production of decedent Manuel Ellis' ("Ellis") medical records from providers who have refused to produce records pursuant to Rankine's subpoenas. Within the broad scope of civil discovery Rankine is plainly entitled to the records. Ellis' estate has put at issue the cause of Ellis' death as well as the reasonable damages, both of which require careful investigation into Ellis' medical, mental health and drug treatment history. Ellis' mental health and drug treatment providers have objected to a

1 traditional subpoena citing various state or federal laws requiring a court order or a release from the  
2 estate. None of the records sought are ultimately privileged and a court order requiring full  
3 production will foster efficient and effective completion of discovery.

## 4 **II. BACKGROUND FACTS**

5 A brief history of Plaintiff Manuel Ellis is necessary to show the import of his medical  
6 records in this matter. Mr. Ellis suffered from bipolar and schizoaffective disorder (with auditory  
7 hallucinations) and had a long history of severe methamphetamine addiction and serious health  
8 conditions, including an enlarged heart. *Declaration of Mark Conrad*, (“*Conrad Decl.*”) at ¶ 3, Ex.  
9 A, E.

10 In September of 2019, Ellis had a psychotic episode; he attempted to rob a convenience  
11 store, struck the store clerk with his belt wrapped around his fist and attempted to grab the money  
12 out of the register. *Id.* at ¶ 4, Ex. B. The store clerk was able to fight Ellis off and Ellis fled the  
13 store. He was later found by Pierce County deputies completely naked in the middle of the 13500  
14 block of Pacific Avenue bleeding from his head. *Id.* Ellis initially complied with the deputies’  
15 commands to lay on the ground; however, he suddenly charged at the deputies who were forced to  
16 tase Ellis in order to handcuff him and take him into custody. *Id.*<sup>1</sup> The deputies then sent Ellis to  
17 the hospital for evaluation. *Id.*

18 While at the hospital, Ellis told staff that he was high on methamphetamine and did not  
19 remember the incident. *Id.* After being medically cleared, Ellis was booked into Pierce County Jail  
20 and charged with Second Degree Robbery. *Id.* Ellis’ mental health records<sup>2</sup> reveal that he later told

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21 <sup>1</sup> Eric Fountain, *Manny Ellis Tacoma’s naked armed robbery suspect*, YouTube (Sept. 22, 2019),  
22 <https://www.youtube.com/watch?v=SlNYfPFSfGg> (depicts Ellis naked, high on methamphetamine and  
having a psychotic episode while being arrested during September 2019 incident).

23 <sup>2</sup> The Pierce County Alliance mental health records were produced pursuant to a Search Warrant signed by  
Pierce County Superior Court Judge Sabrina Ahrens.

1 his treatment counsel that during this incident he binged on methamphetamine which led to “full  
2 psychosis.” *Id.* at ¶ 5, Ex. C, p. 24, 31, 34, 136. Mr. Ellis also admitted to this mental health  
3 counselor that “methamphetamine and cannabis exacerbate his mental health issues,” which  
4 includes schizophrenic auditory hallucinations. *Id.*

5 Ellis remained in custody for roughly a month on the robbery charge. On October 21, 2019,  
6 Pierce County Judge Garold Johnson granted Ellis’ release so that he could obtain treatment  
7 pursuant to a “Jail Transitional Service Plan,” but on the condition that he not consume any  
8 methamphetamine and/or unprescribed substances. *Id.* at ¶ 6, Ex. D. Ellis was facing prison time  
9 on the charge. His trial date was April 1, 2020. *Id.*

10 Ellis’s next known interaction with law enforcement was the incident underlying this  
11 lawsuit. On March 3, 2020, Ellis violated his conditions of release by consuming a potentially  
12 lethal amount of methamphetamine. *Id.* at ¶ 7, Ex. D, A p. 2. He stood in the middle of the street  
13 and attempted to get into a vehicle as it passed. *Id.* ¶ 7, Ex. D, p. 15-16, 19-21. Tacoma Police  
14 Officers Matthew Collins and Christopher Burbank observed Ellis’ behavior and attempted to  
15 make contact with him. *Id.* Ellis ran to the officer’s patrol vehicle, his eyes wide, sweating  
16 profusely. *Id.* He began speaking rapidly about having “a bad day,” being “really hot” needing to  
17 “sit down for a couple of days,” and having issues with warrants. *Id.* Officer Collins instructed  
18 Ellis to sit down on the sidewalk curb so that they could pull their vehicle over and help him. *Id.*  
19 Ellis responded to Officer Burbank, “Instead I might just punch you in the fucking face” and began  
20 punching the officer’s passenger window. *Id.* Officer Collins, the driver, ran around the vehicle  
21 from the driver’s side to attempt to control Ellis, but Ellis lifted and threw Collins to the ground.  
22 *Id.* Both Officers struggled with Ellis for three to four minutes trying to gain control of him. *Id.*

1 They radioed urgently for assistance given their inability to overcome Ellis' significant resistance.  
2 They were eventually able to get Ellis into handcuffs. *Id.*

3 Other officers arrived in response to Collins' and Burbank's calls for assistance. *Id.* They  
4 observed Ellis violently thrashing in the handcuffs, making grunting noises, and spitting at officers.  
5 *Id.* at p. 16, 21, 30. Officers eventually used hobbles to control Ellis' legs and a spit hood to stop  
6 Ellis from spitting at officers. *Id.* Officers also immediately called for medical personnel to  
7 evaluate Ellis for his injuries. *Id.* Some officers suspected Ellis was experiencing the constellation  
8 of symptoms commonly known as "excited delirium." *Id.* at p. 16, 30. While waiting for medical  
9 personnel to arrive, officers watched Ellis' breathing, checked his pulse and injuries, and twice  
10 rolled him onto his side into a "recovery position." *Id.* at p. 16, 25, 31.

11 Tacoma Fire Department arrived and noted Ellis exhibited garbled speech. *Id.* at ¶ 8, Ex.  
12 F, p 4. They also noted he had respiratory drive, but that it deteriorated into labored breathing;  
13 Ellis then ceased breathing. *Id.* Medics were unable to revive him. A toxicology report revealed  
14 that Ellis had an "extremely high methamphetamine concentration" (2400 ng/mL) in his blood  
15 among other substances, including amphetamine (54 ng/ml), ephedrine (19 ng/ml), and  
16 phenylpropanolamine (39 ng/ml). *Id.* at ¶ 3, Ex. A, p. 7-8. The Washington State Patrol Chief  
17 Toxicologist noted, "The methamphetamine amount was at a level where they have seen in plenty  
18 of other cases where methamphetamine was the cause of death." *Id.* at ¶ 9, Ex. G, p. 4. The Pierce  
19 County Medical Examiner also noted that the methamphetamine level was "well within the fatal  
20 range and could have caused his death independently." *Id.* at ¶ 3, Ex. A, p. 2. The autopsy also  
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1 found Ellis suffered from an enlarged heart; the autopsy report references medical records showing  
2 a history of cardiac and pulmonary disease resulting from history of drug abuse. *Id.* at p. 12.<sup>3</sup>

3 On May 4, 2022, Rankine’s counsel notified all parties and Ellis’ medical providers of his  
4 intent to subpoena Ellis’ medical records; the notice provided a deadline for obtaining a protective  
5 order to stop the subpoena process. *Id.* at ¶ 10, Ex. H. Rankine served the subpoenas after the  
6 prescribed waiting period; no objection was made, and no protective order sought. *Id.* at ¶ 10. Only  
7 then did DSHS, SeaMar, Greater Lakes Mental Healthcare, Comprehensive Life Resources, and  
8 the Pierce County Sheriff- Corrections- Jail object pursuant to various state and federal laws<sup>4</sup>  
9 regarding confidential and privileged records and/or indicated that they needed either a signed  
10 authorization or a court order to produce the records.<sup>5</sup> *Id.*, ¶ 11, Ex. I. Additionally, Ellis also

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12 <sup>3</sup> The Postmortem Examination Report details medical records disclosing a problem list consisting of:  
13 dilated cardiomyopathy, ADHD, chest pain, methamphetamine abuse, anxiety, asthma, IVDA, acute  
14 pericarditis, pneumonia, pericardial effusion without cardiac tamponade, hypoxia, pleurisy, and SIRS.  
*Conrad Decl.*, Ex. A.

15 <sup>4</sup> RCW 74.04.060; CFR 45 (C), 42 C.F.R. Part 2; RCW 70.02.230 2o; RCW 5.56.010; RCW 70.02 et seq.;  
RCW 70.48, et seq.

16 <sup>5</sup> Comprehensive Life Resources objected and responded that: “Our facility requires a Judicially signed  
17 subpoena in order to release records for the client. **Please provide us with a judicially signed subpoena  
or a signed authorization from the client’s personal representative** with paperwork showing that the  
personal representative is able to sign for the client.” *Conrad Decl.*, at Ex. I (emphasis added).

18 Sea Mar objected and responded that: “A subpoena issued by an attorney alone is not sufficient when  
19 records are sought for substance use disorder treatment records. The federal regulations at 42 CFR Part 2  
require a court order.” *Conrad Decl.*, at Ex. I (emphasis added).

20 Greater Lakes Mental Healthcare objected and responded that: “Pursuant to the requirements of C.F.R. 45  
21 (C), 42 C.F.R. Part 2, RCW 70.02.230 2o, and RCW 5.56.010, Greater Lakes Mental Healthcare **requires  
a properly executed authorization with any supporting documentation, from next of kin or a Court  
Order signed by a judge** in order to release records....” *Conrad Decl.*, at Ex. I (emphasis added).

22 DSHS objected and responded that: “We must have a valid authorization or court order to allow us to give  
23 you client records held by DSHS.” *Conrad Decl.*, at Ex. I (emphasis added).

Pierce County Sheriff’s Department- Corrections responded: “Since the records are regarding an inmate,  
RCW 70.02 (health records) and 70.48 control (non-health records) release of the records. The Pierce

1 received drug and/or mental health treatment at Sundown M. Ranch, Fairfax Hospital and Lakeside  
2 Milam Recovery Center. *Id.*, ¶ 12. Each of these facilities have also indicated that they will require  
3 a court order or signed authorization prior to release. *Id.*

4 Rankine therefore requests a court order compelling production of Ellis’ medical, mental  
5 health, and drug treatment records. Rankine has repeatedly sought plaintiff’s cooperation in  
6 securing these records by stipulation without success. *Id.* at ¶ 13.

### 7 **III. ARGUMENT**

8 The scope of discovery is broad: "[W]ide access to relevant facts serves the integrity and  
9 fairness of the judicial process by promoting the search for truth." *Epstein v. MCA, Inc.*, 54 F.3d  
10 1422, 1423 (9th Cir. 1995). District courts have broad discretion in determining relevancy for  
11 discovery purposes. *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). Information need not  
12 be admissible to be discoverable. Fed. R. Civ. P. 26(b)(1). Plaintiffs have waived physician-patient  
13 privilege because they have brought a myriad of federal and state law claims that specifically put  
14 Ellis’ physical and mental health at issue;<sup>6</sup> accordingly, Ellis’ medical and mental health records  
15 are discoverable.

16 Plaintiffs claim that the defendants intentionally inflicted emotional distress and caused  
17 Ellis’ death; destroyed parent-child relationships; that Ellis “would have lived for several  
18 decades;” and that Ellis lost earnings, lost enjoyment of life, and suffered special and general  
19 damages. Complaint, Dkt. No. 22 at 5.14, 5.24-.25, 6.1-.5. Ellis’ medical, mental health, and drug  
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21 County Sheriff’s Department can only provide responsive documents once the statutes have been  
22 satisfied.”

23 <sup>6</sup> “Plaintiffs waive their physician-patient privilege when they voluntarily put their physical or mental health  
at issue in a judicial proceeding.” *Lodis v. Corbis Holdings, Inc.*, 172 Wn. App. 835, 854, 292 P.3d 779  
(2013); *see also* RCW 5.60.060(4)(b) (“Ninety days after filing an action for personal injuries or wrongful  
death, the claimant shall be deemed to waive the physician-patient privilege.”).

1 treatment history are squarely at issue and essential to properly evaluate the underlying facts of  
2 the incident, his cause of death, the projected quality and duration of his life had he lived, his  
3 relationship with beneficiaries, his likely future earnings, and other general and special damages  
4 issues. Ellis’ medical and mental health records will also provide highly relevant insights into  
5 Ellis’ lifestyle, health habits, drug use, rehabilitation efforts, medical conditions, diagnoses,  
6 prognoses, social life, familial relationships, and future prospects – these topics go directly to the  
7 issue of damages, as plaintiffs seek economic and non-economic relief on multiple claims.<sup>7</sup> Indeed,  
8 the Pierce County Alliance mental health records, which were produced pursuant a search warrant  
9 during the investigation of this matter, reveal critical facts regarding Ellis’ activities leading up to  
10 the incident at issue, his mental state, medical history, relationship with family members, history  
11 of drug use, etc. *See Conrad Decl.* ¶ 11, Ex. C.

12 Pursuant to RCW 70.02.060, prior to issuing the subpoenas, Rankine provided advance  
13 notice to each health care provider and the estate’s counsel indicating from whom, by when, and  
14 what information is sought, as well as the day a protective order must be obtained to prevent the  
15 provider from complying. *Conrad Decl.*, at ¶ 10. “In the absence of a protective order issued by a  
16 court of competent jurisdiction forbidding compliance, the health care provider shall disclose the  
17 information in accordance with this chapter.” RCW 70.02.060. Notably, neither plaintiffs nor any  
18 medical provider sought a protective order or an order quashing the subpoenas.

19 Certain state statutes and federal regulations allow the production of specific types of health  
20 records only upon court order and/or stipulation. *See e.g.*, RCW 70.02.230; 34 CFR Section  
21 361.38; and 42 CFR [Part 2] §2.61 (b)(1) (“(b)(1) A person holding records subject to the

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23 <sup>7</sup> Currently available information also provides that Ellis previously underwent substance abuse treatment  
and was diagnosed with depression, bipolar disorder, ADHD, PTSD, and schizo-affective disorder. *Id.*, Ex.  
C.

1 regulations in this part receives a subpoena for those records. The person may  
2 not disclose the records in response to the subpoena unless a court of competent jurisdiction enters  
3 an authorizing order under the regulations in this part.”)). To date, plaintiff Monet Carter-Mixon  
4 has refused to sign any voluntary release of records; accordingly, Rankine moves this Court for an  
5 order compelling production.

6 As listed above, all of the providers have raised statutory objections to disclosure, taking  
7 the position that a subpoena issued by an attorney is not sufficient to meet the “order of a court”  
8 provisions of these statutes and regulations. Thus, Rankine seeks an order from this Court  
9 compelling production from the providers listed below in order to effectuate production of this  
10 necessary discovery.<sup>8</sup> Additionally, to avoid having to bring this same motion in the future,  
11 Rankine requests that the order also be directed to any of Ellis’ medical providers not yet identified.

- 12 1. Washington State- Department of Social and Health Services
- 13 2. Greater Lakes Mental Healthcare
- 14 3. Pierce County Sheriff’s Department; Corrections; Jail
- 15 4. Sea Mar Rehabilitation
- 16 5. Comprehensive Life Resources
- 17 6. Sundown M. Ranch
- 18 7. Fairfax Hospital
- 19 8. Lakeside Milam Recovery Center

#### 20 IV. CONCLUSION

21 A court order is the most expeditious avenue to get the discoverable medical records and  
22 avoid unnecessary delay. Rankine requests that this Court enter an order compelling all medical,  
23 mental health, drug treatment, and behavioral health records related to Manuel Ellis.

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<sup>8</sup> Defendant Rankine has no opposition to limiting the scope of production to records dated/created on or after March 3, 2013, i.e., seven years prior to the incident underlying plaintiff



1 DATED this 14<sup>th</sup> day of July 2022.

2 FREY BUCK, P.S.

3 By: 

4 Ted Buck, WSBA #22029

5 Anne Bremner, WSBA # 13269

6 Mark Conrad, WSBA #48135

7 *Attorneys for Defendant Rankine*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 14, 2022, I electronically filed the foregoing with the Clerk of  
3 the Court using the CM/ECF system which will send notification of such filing to the following:

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8                   DATED this 14<sup>th</sup> day of July 2022 at Lynnwood, Washington.

9                   

10                   \_\_\_\_\_  
11                   Stephanie Johnson